



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT *We strive to be caring, professional and fair*

To: Planning Commission

Through: Townsley Schwab, Planning Director

From: Susan Grimsley, Assistant County Attorney *mg*

Date: July 11, 2008

Re: Text Amendment to Section 9.5-511

For: Meeting of July 23, 2008

Proposal: To amend Section 9.5-511 concerns Amendments to the Land Development Regulations to clarify procedures and changes to the land use district map.

Process: The BOCC may consider changes to the text recognizing one of the six factors in Sec. 9.5-511(5)b. The DRC should review the proposal. The Planning Commission must hold one public hearing, and then the BOCC must hold a public hearing.

Analysis: The proposed ordinance amendment meets the following criteria:

1. Sec. 9.5-511(5)b. (iv) New issues

There has been a recent challenge to the zoning map at a BOCC meeting. In addition there was an attempt to use this process at a Planning Commission meeting for a future land use map change. The ordinance itself is unclear on a number of issues. No process was available to guide the verification of ownership. In addition, there has been discussion about the application of the quantifier 20% and whether it refers to the number of owners of adjacent land or the quantity of land owned. This amendment clarifies that one needs protests by owners of 20% of the **land** lying within 300 feet of the affected property. The distance and notice was changed to 300 feet, which is the usual notice requirement for conditional uses and other development approvals. Using 20% of the **owners** may lead to a larger number of people protesting, but who may only own 5% of the property.

Adjacency is not proposed; the distance requirement is substituted. This factor, the actual percentage, and whether a percentage of owners or land should be the criteria are policy issues for discussion.

2. Sec. 9.5-511(5) b. (v) Recognition of a need for additional detail or comprehensiveness

As proposed, there is now a requirement for posting set forth, along with mailed notice. In addition, there is a clear procedure for the protest, and a suggested date by which such protest may be received. It applies, as it always did, to the vote by the Board of County Commissioners.

Recommendation: Staff recommends approval.

ORDINANCE NO. _____-2008

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 9.5-511 OF THE CODE OF ORDINANCES CONCERNING AMENDMENTS TO THE LAND DEVELOPMENT REGULATIONS AND LAND USE DISTRICT MAP; PROVIDING FOR NOTICE; PROVIDING A METHOD OF PROTEST FOR LAND USE DISTRICT MAP CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND FOR AN EFFECTIVE DATE.

WHEREAS, there has been a difference of opinion in the interpretation of the protest procedure of Section 9.5-511 of the Monroe County Code concerning redesignations of the land use district map; and

WHEREAS, this matter of interpretation has been the source of litigation which, even if adjudicated or settled, will not result in a codified change to the regulations;

NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Section 9.5-511 of the Monroe County Code is amended as follows:

Sec. 9.5-511. Amendments to this chapter.

(a) *Purpose:* The purpose of this article is to provide a means for changing the text of this chapter which also includes changes to the land use district map. It is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit a change in community character, as analyzed in volume I of the plan, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the board of county commissioners shall consider, in addition to the factors set forth in this article, the consistency of the proposed amendment with the provisions and intent of the plan.

(b) *Authority:* The board of county commissioners may amend the text of this chapter upon the compliance with the provisions of this article. Amendments may be proposed by the board of county commissioners, the planning commission, the director of planning, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The director of planning shall have the responsibility to establish the format as approved by the board of county commissioners by which applications can be submitted and shall have the authority to screen those amendments, processing only those which are presented on a complete application; and those deemed insufficient shall be returned to the applicant for correction and resubmittal within twenty-one (21) days.

(c) *Timing*: Applications for map and text amendments to this chapter shall be accepted at any time. The planning director shall review and process the map and text amendment applications as they are received and pass them on to the development review committee and the planning commission for recommendation and final approval by the board of county commissioners.

(d) *Procedures*:

(1) *Proposals by Board of County Commissioners, Planning Commission or Director of Planning*: Proposals for amendments by the board of county commissioners, the planning commission or the director of planning shall be transmitted to the planning department and the development review committee for review and comment, ~~and recommendation to the planning commission~~.

(2) *Proposals by Affected Landowners*: Any landowner or other person having a contractual interest in property desiring to petition the board of county commissioners for an amendment to the land use district map shall be required to file an application with the director of planning accompanied by a nonrefundable application fee as established from time to time by the board of county commissioners to defray the actual cost of processing the application [see section 9.5-522]. The director of planning shall transmit the proposed amendment to the planning department and the development review committee for review and comment ~~preparation of a recommendation~~ to the planning commission.

(3) *Public Hearing(s)*: The planning commission and the board of county commissioners shall each hold at least one (1) public hearing on a proposed amendment to the text of this chapter or to the land use district map.

a. *Notice*: Notice of the public hearings for a proposed amendment to the text of this chapter which also includes changes to the land use district map shall be provided as required by section 9.5-45 of this Code.

b. *Posting of notice*: Posting of notice for land use district map amendments shall be made in accordance with the requirements of section 9.5-45.

c. *Other notice*: Notice of all public hearings shall be posted on the Monroe County Website as soon as is practical. Failure to post notice on the Monroe County Website shall not constitute grounds for the cancellation of any public hearing nor shall it constitute grounds for the cancellation of any action taken by a board at such a meeting.

d. In addition to any statutory notice, notice of a hearing for a change to the land use district map shall be mailed to property owners within 300 feet of the property affected by the proposed change, using the Property Appraiser's most recent records.

(4) *Action by Planning Commission*: The planning commission shall review the application, the reports and recommendations of the department of planning and the comments of the development review committee, and the testimony given at the public hearing, and shall submit its recommendations and findings to the board of county commissioners.

(5) *Action by Board of County Commissioners Following Public Hearing(s)*:

a. The board of county commissioners shall consider the report and recommendation of and the testimony given at the public hearings.

b. The board of county commissioners may consider the adoption of an ordinance enacting the proposed change based on one (1) or more of the following factors:

(i) Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;

(ii) Changed assumptions (e.g., regarding demographic trends);

(iii) Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;

- (iv) New issues;
- (v) Recognition of a need for additional detail or comprehensiveness; or
- (vi) Data updates;

however, in no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located.

c. A written protest concerning an application for an amendment to the land use district map may be filed by the owners of no less than twenty (20) percent of the area of the land to be affected. In addition, a written protest may be filed by owners of no less than twenty (20) percent of the land within 300 feet of the affected property. Rounding up of decimals and percentages shall not be permitted. In either case, the area used as right of way for U.S. 1 shall not be included in any calculations. Such protest must be by notarized statement from each individual owner, on a form provided by the county with the name, address, parcel real estate number, home address and telephone number. The original of the written protests must be filed with the Clerk of the Board at least forty-eight hours before the first County Commission meeting at which the amendment will be heard, and a copy given to the County Attorney and to the applicant requesting the amendment. No further protests will be accepted by the Board. The Board shall not vote until the signatures, ownership, and protest have been verified. In the event the signatures and protest are found to be true and accurate, the amendment shall not become effective except by the favorable vote of four (4) members of the board of county commissioners. Owners' protests shall not be considered unless received as prescribed above. ~~In the event of a written protest against such amendment signed by the owners of twenty (20) percent or more either of the area of the lots or land included in the proposed amendment or of the lots or land immediately adjoining the property to be affected and extending two hundred (200) feet therefrom, such amendment shall not become effective except by the favorable vote of four (4) members of the board of county commissioners.~~

d. Except as provided in paragraph (c) above, the board of county commissioners may adopt the proposed amendment or the proposed amendment as modified by not less than a majority of its total membership.

(e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or drafting errors may be adopted by the board of county commissioners without posted notice or public hearing at any regular meeting. As long as the county is within an area of critical state concern, notice of such amendments shall be transmitted to the Florida Department of Community Affairs within thirty (30) days.

Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state, or County law, rule code or regulation, the more restrictive shall apply.

Section 4. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Filing.

This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving the ordinance.

Section 6. Effective Date.

This ordinance shall become effective as provided by law and stated above.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ of _____ 2008.

Mayor Mario DiGennaro
Mayor Pro Tem Charles McCoy
Commissioner Sylvia Murphy
Commissioner George Neugent
Commissioner Dixie Spehar

(SEAL)

Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By _____
Deputy Clerk

By _____
Mayor/Chairperson